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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.1567/2000

APPELLANT (In Jail)	Budharu Satnami, S/o Sukalu Satnami, aged about 38 years, R/o Satnami Para, Naya Para, Distt. Raipur (M.P.)
Vs	
RESPONDENT	State of M.P.

JUDGMENT

POST ON 5th SEPTEMBER 2007

Sd/-
DHIRENDRA MISHRA
Judge

(45)

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	Vs
RESPONDENT	State of M.P.

Present:

Miss Nirupama Bajpai, Advocate for appellant.

Mr. Neeraj Mehta, Panel Lawyer for the State.

J U D G M E N T

(Delivered on 5th.9.2007)

Dhirendra Mishra, J:

1. This appeal is directed against the judgment of conviction and order of sentence dated 8th February, 2000 passed in Sessions Trial No.318/99 by learned 4th Additional Sessions Judge, Raipur whereby the appellant has been convicted under Sections 306 & 498-A of the I.P.C. and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 6 months & R.I. for 3 years and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 6 months respectively. Substantive sentences imposed on the appellant are to run concurrently.

2. Case of the prosecution, in brief, is that the appellant was married to Shailendri Bai, who was physically disabled, as her left hand & right leg did not function. On 5.4.1999 Shailendri Bai poured kerosene over her body and set herself on fire with the help of match-stick. She was referred to the Primary Health Centre, Nawapara for

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examination where Dr. S.C. Shrivastava (PW-1) examined her, gave his report Ex.P-1 and after giving her first aid referred her to Medical College, Raipur. She was admitted in the Medical College Hospital, Raipur where she died on 17.4.1999 at about 4.30 p.m. Her dead body was sent for autopsy to Medical College, Raipur where Dr. Arvind Nerulwar (PW-2) conducted postmortem over her body and gave his report Ex.P-3. The doctor performing postmortem examination opined that the deceased had sustained 2nd to 3rd degree burn and 55% of her body sustained burn injuries. Cause of death was given as syncope as a result of anti-mortem burn injuries.

3. After completing investigation, charge sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Raipur and the same was received by learned 4th Additional Sessions Judge on transfer for trial. During trial, the prosecution examined 11 witnesses. Learned trial Court after hearing learned counsel for the respective parties, convicted & sentenced the appellant as mentioned in Paragraph 1 of this judgment.

4. Conviction of the appellant is based on the statement of Chunuram (PW-3), father of deceased, Shyama Bai (PW-4), Lakhan (PW-7) & Head Constable Shatrughan Das (PW-8), who recorded the dying declaration (Ex.P-8) of the deceased.

5. Learned counsel for the appellant submits that no direct or indirect evidence of abetment is available on record and mere fact that the husband treated the deceased wife with cruelty is not enough. She further submits that merely on the allegation of harassment, the conviction in terms of Section 306 of IPC is not sustainable. Reliance is placed on

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the judgment of Hon'ble Supreme Court in the matter of **Kishori Lal VS. State of M.P.** reported in **2007 (4) Supreme 674.**

6. On the other hand, learned counsel for the State supports the judgment of trial court.

7. I have heard learned counsel for the parties. I have perused the record.

8. Chunuram (PW-3), father of deceased, has stated that the appellant was married to his daughter Shailendri Bai some 6-7 years before the date of incident. Shailendri Bai's left leg and right hand did not function. During 6-7 years of marriage there was no quarrel in his daughter's in-laws house. In the meanwhile his wife died. He used to send his wife Nanabai to see Shailendri Bai in the appellant's house, however, after her death the accused used to quarrel with Shailendri. Two months' before the incident, Shailendri came to his house and informed that the accused beats her, however, she did not tell the reason and she had stated that she will not go to her in-laws house, as her husband used to beat her. She stayed for 15 days and during this period accused Budharu came to his home daily both times to take Shailendri Bai, however, she refused to go with him and even he was not prepared to send Shailendri Bai. Afterwards he sent her and later on he learnt that Shailendri Bai has sustained burn injuries and has been admitted in the hospital. He went to see her in the hospital where Shailendri told him that the accused quarreled with her in the night, therefore, she poured kerosene after the accused went to his work and set herself on fire with the help of match-stick. She died after 8 days of the incident. Why the accused had beaten Shaieldri Bai, he does not

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know. Whether he beat her because she was physical disabled or she was not able to work, only the accused knows. In the cross-examination he has stated that after 15 days he sent his daughter to the accused house.

9. Shyama Bai (PW-4) is sister-in-law (Bhabhi) of the deceased and she has stated that her family members told her that Shailendri Bai committed suicide by pouring kerosene on her body because of some quarrel in her matrimonial house. Whenever she came to her house she used to complain that the appellant used to quarrel and beat her. Bachanram (PW-5), husband of Shyama Bai (PW-4) & brother of deceased, has also stated that her sister came to their house before the death and stayed for 15 days. During that period she complained that the accused beats her, however, after 15 days she was sent to her in-laws place. When he had gone to see her in the Medical College Hospital, Raipur the deceased told her that the accused quarreled with her in the night and beat her and therefore, she herself has poured kerosene and set herself on fire. In Para 7 he has stated that he used to go to the house of accused and they were living peacefully. During her stay in the last occasion, the accused used to come everyday to their place to take her. Similar is the statement of Laxmantin Bai (PW-6).

10. Head Constable Shatrughan Das (PW-10) has stated that he had recorded the statement of Ex.P-8 of the deceased in which she has stated that there was a quarrel between her and her mother-in-law on account of her children, at that time her husband Budhram came and slapped her twice and therefore, she poured kerosene and set herself on fire. Whereas, the appellant in his statement recorded under Section 313 of Cr.P.C. has taken a defence that he is

innocent and he never beat his wife. There was a quarrel between his mother and the deceased in connection with children. The deceased was short tampered and earlier also several times she left his home. He learnt about the incident in his work place whereupon he immediately admitted her in the hospital and from there she was taken to the Raipur Hospital. He tried his level best to save the life of his wife. He donated her blood also. However, she died during treatment and because of this reason his in-laws have lodged a false report against him.

11. From the statement of appellant and other relatives of the deceased it appears that there were frequent domestic quarrels between the husband and wife as a result of which the deceased left her matrimonial home and resided with her parents on many occasions, however, appellant persuaded her to return back. From perusal of the document of Ex.P-8 being the dying declaration of the deceased recorded by Head Constable Shatrughan Das (PW-8) it appears that on the date of incident there was some domestic quarrel between the deceased and her mother-in-law on account of children, whereupon her husband slapped her twice as a result of which she set herself on fire after pouring kerosene. In the postmortem report also except burn injuries no other injury has been found by Dr. Arvind Nerulwar (PW-2).

12. In the matter of Kishori Lal (supra) it has been held that in the cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide and mere fact that the husband treated the deceased wife with cruelty or allegations of harassment is not enough for conviction under Section 306 of IPC. To constitute offence of abetment under Section

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107 of the IPC the essential ingredients are that the accused instigates any person to do that thing or engages with one or more other persons in any conspiracy for the doing of that thing; or intentionally aids, by act or illegal omissions, the doing of that thing. The word 'instigate' literally means to provoke, incite, urge on or bring about by persuasion to do anything.

13. Thus from the evidence available in the case at hand, it is evident that no evidence has been led by the prosecution to show that the appellant in any manner instigated the deceased to commit suicide by his direct or indirect action. Therefore, if the evidence in the present case is scrutinized in the light of the principle of law laid down in the judgment of Kishori Lal (supra), it is crystal clear that the prosecution has failed to establish its case beyond reasonable doubts that the appellate abetted his wife to commit suicide. In these circumstances, conviction of the appellant under Section 306 of IPC cannot be sustained.

14. In the result, the appeal partly succeeds. Conviction of the appellant under Sections 306 of the IPC and sentence imposed under that section are hereby set aside. However, the conviction of the appellant under Section 498-A of IPC and sentence imposed under that section are hereby maintained. It is stated that the appellant is in jail since 2.6.1999 and as such he has already completed the jail sentence imposed upon him under Section 498-A of IPC and therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-